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## SUPREME COURT OF THE UNITED STATES

### FRANKLIN AND MARSHALL COLLEGE *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 85-1439. Decided June 2, 1986

The petition for a writ of certiorari is denied.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins,  
dissenting.

The Equal Employment Opportunity Commission is investigating petitioner on a charge of discriminating on the basis of national origin in denying tenure to a former assistant professor. In the course of its investigation, the EEOC issued a subpoena *duces tecum* for evaluations submitted by petitioner's faculty in all cases in which tenure was granted or denied from 1977 to the present. The EEOC offered to accept the subpoenaed materials with names and identifying characteristics deleted. Petitioner resisted the subpoena, asserting a privilege against the compelled production of confidential peer review materials absent a showing of facts supporting an inference of discrimination. The United States Court of Appeals for the Third Circuit rejected the asserted privilege, 775 F. 2d 110 (1985), which has been accepted by another Court of Appeals, see *EEOC v. University of Notre Dame du Lac*, 715 F. 2d 331, 337, n. 4 (CA7 1983). I would grant certiorari to resolve this conflict.

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